

**REMARKS*****Restriction Requirement***

In the Office Action, the Examiner requires restriction between the following groups:

- Group I: Claims 6-7 and 33 are, drawn to a process for the cosmetic treatment of hair, comprising (a) producing activated hair by non-reducing activation of the hair; and (b) applying to the activated hair at least one cosmetically acceptable compound comprising at least one functional group capable of forming at least one covalent bond with the activated hair, **wherein the non-reducing activation of the hair is physical activation**[: and]
- Group II: Claims 8-9, 22-32, and 34<sup>1</sup> are, drawn to a process for the cosmetic treatment of hair, comprising (a) producing activated hair by non-reducing activation of the hair; and (b) applying to the activated hair at least one cosmetically acceptable compound comprising at least one functional group capable of forming at least one covalent bond with the activated hair, **wherein the non-reducing activation of the hair is chemical activation**.

Office Action at 2 (emphasis in original).

In addition, the Examiner indicated that claims 1-5, 10-21, and 33-34<sup>2</sup> link inventions I and II. See *id.* at 5. As the Examiner knows, linking claims should be examined together with the elected invention. M.P.E.P. § 809. If any linking claim is

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<sup>1</sup> The Examiner included claim 34 among claims reading on Group II; however, Applicants believe the Examiner meant to refer to independent claim 35. Thus, Applicants respectfully submit that claim 34, since it depends from claim 33, which is identified as belonging to Group I, should also be included in Group I. Applicants respectfully request confirmation or correction of this understanding in the next Office Action.

<sup>2</sup> The Examiner indicated that claims 33 and 34 are linking claims; however, these claims are also identified as belonging to Group I. Applicants respectfully request clarification as to whether the Examiner considers claims 33 and 34 to be linking claims, or as part of Group I.

allowed, the restriction requirement should be withdrawn. *Id.* Any claim directed to the non-elected invention, previously withdrawn from consideration, which depends from or includes all the limitations of the allowable linking claim should be rejoined and be fully examined for patentability. *Id.*

Applicants respectfully traverse the restriction requirement for at least the reasons given below. However, to be fully responsive, Applicants elect, with traverse, the subject matter of Group I, claims 6, 7, 33, and 34 for prosecution on the merits.

The M.P.E.P. instructs Examiners as follows:

If the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions.

M.P.E.P. § 803 (emphasis added).

Here, the Examiner has not shown that examining all claims together would constitute a “serious burden” as required by the M.P.E.P. Rather, the Examiner merely asserts that “the claims do not overlap in scope” because “the mode of operation is different.” Office Action at 3. However, Applicants note that the processes of Group I (physical activation) and Group II (chemical activation) both recite, inter alia, a process comprising non-reducing activation of the hair and application of at least one cosmetically active compound to the activated hair. Thus, the required search for the process of Group I would at least partially overlap with the required search for the process of Group II. This overlap would substantially reduce any burden on the Examiner in considering both groups in this same application. Additionally, Applicants submit no serious burden would exist in light of the requirement of rejoinder. See M.P.E.P. § 821.04. As such, absent a showing of a serious burden in searching and

examining the claims as required by the M.P.E.P, the restriction requirement is improper and Applicant requests that it be withdrawn.

***Election of Species***

The Examiner also requires two elections of species:

(1) First, if Applicants elect Group II, the Examiner requires election of a single compound capable of non-reducing activation of hair, chosen from 20 possible species recited in claims 23 and 30 and set forth on pages 3-5 of the Office Action. Applicants assert that this requirement is moot in view of Applicants election of Group I above.

(2) The Examiner also requires election of a single cosmetically active compound, chosen from 19 possible species recited in claims 14, 16-18, and 20 and set forth on pages 6-8 of the Office Action. Applicants respectfully traverse this election requirement; however, to be fully responsive, Applicants elect, with traverse, dye derivatives as the cosmetically active compound. Applicants assert that at least claims 1-7, 10-14, 33, and 34 read on the elected species. Applicants further believe the election requirement is improper as there would be no serious burden on the Examiner to examine the full scope of the claims, as set forth above.

Specifically, with respect to the election of a particular cosmetically active compound, the Examiner asserts that "[t]he species are independent or distinct because they are drawn to divergent compounds" and "are not obvious variants." Office Action at 8. Applicants respectfully disagree and note that each cosmetically active compound listed comprises "at least one functional group capable of forming at least one covalent bond with the activated hair," as claimed, e.g., in claim 1. Applicants assert that because the cosmetically active compounds share at least this common feature, the

burden on the Examiner in considering both groups in this same application would be substantially reduced. As such, Applicants respectfully request that the election of species requirement be withdrawn.

If the Examiner chooses to maintain the restriction and election of species requirements, and if the elected groups and species are found to be allowable, Applicants request that the Examiner continue to examine the full scope of the claims to the extent necessary to determine the patentability of the pending claims. See M.P.E.P. § 803.02 and 35 U.S.C. § 121.

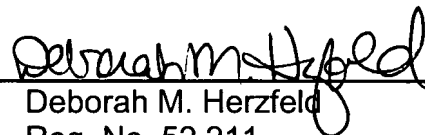
***Conclusion***

In view of the foregoing remarks, Applicants respectfully request reconsideration and examination of the claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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